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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIK BROGAARD THOMSEN

Appeal 2010-000992
Application 09/381,771
Technology Center 3600

Before JOHN C. KERINS, STEFAN STAICOVICI, and
GAY ANN SPAHN, *Administrative Patent Judges*.

SPAHN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Erik Brogaard Thomsen (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's rejection of claims 27-36 under 35 U.S.C. § 103(a) as unpatentable over Brown (WO 93/04559 A1, pub. Mar. 4, 1993) and B/W Fontworks, Sanity Font¹ (hereinafter "Fontworks"). Appellant cancelled claims 1-26. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

THE CLAIMED SUBJECT MATTER

The claimed subject matter is directed to a method of using a figurative print on a plane print carrier, e.g., a football field. Spec. 1. Claim 27 (the sole independent claim), reproduced below, with emphasis added, is representative of the subject matter on appeal.

27. A method of:

providing an image to be viewed, whereby said image has first, second and third orthogonal directions;

reconfiguring said image to a planar image *whereby said first orthogonal direction and said second orthogonal direction form an angle of 90 degrees minus a first predetermined non-zero angle* and whereby said second orthogonal direction and said third orthogonal direction form an angle of 90 degrees plus a second predetermined non-zero angle;

placing said reconfigured planar image at a given angle with respect to a viewer whereby said image appears to the viewer to protrude from said reconfigured planar image and have said first,

¹ Accessed at <http://home.revealed.net/bwsoft/FONTS.HTML> by the Examiner on Jun. 18, 2001.

second and third orthogonal directions, wherein the first and second orthogonal directions form a plane different from the plane of said planar image; and

wherein said image comprises a primary figurative element and a secondary figurative element, wherein said secondary figurative element depicts a third dimension of said image.

OPINION

The Examiner finds that Brown teaches an advertising or promotional image displayed on a surface, e.g., a field at a sporting event, where the image appears to be transformed or reconfigured, and then applied to the surface 10 so that “[t]he image then appears to extend at an angle greater than the angle of [the] actual line of sight of the observer.” Ans. 3. The Examiner concedes that Brown does not disclose that the image includes secondary figurative elements; however, the Examiner finds that Fontworks teaches “additional elements such as shadow, relief and background” and the Examiner concludes that it would have been obvious to one of ordinary skill in the art “to utilize such additional elements in the image of Brown so that the image will appear more realistic.” *Id.* The Examiner also concedes that “Brown does not specifically teach the angles recited in claim 27, however it would have been obvious to a person having ordinary skill in the art to determine the appropriate angles (or use a computer to do so) so that the image appears to protrude at a right angle to the observer’s line of sight, as desired by Brown.” Ans. 3.

Appellant contends that while Brown describes “how an image can be depicted in an inverse perspective form on a playing field” so that when the image is viewed by a video camera, “it appears to be in a plane having an

angle to the actual plane whereon the image is depicted,” Brown fails to describe “how to add further elements to the depicted image in such a way that when said image is viewed from a video camera, it appears to have both a first surface plane in a first dimension and a second depth plane in a second dimension.” App. Br. 7-8. Appellant also contends that Fontworks does not cure Brown’s deficiency because it does not teach “how to define the angles with respect to the first and second dimensions such that a third dimension is obtained and appears to be perpendicular to the plane of advertisement when the print carrier [or playing field] is seen in the third direction.” App. Br. 8. In other words, Appellant argues that the hypothetical person of ordinary skill in the art “seeking to improve the apparatus described in the Brown reference, by looking at the Fontworks reference, would not know how to add a secondary figurative element depicting a third dimension, including how to define the angles to the first and second dimension such that a third dimension is obtained that appears to be perpendicular to the plane of advertisement when the print carrier [or playing field] is seen in the oblique direction.” App. Br. 8-9. Thus, in Appellant’s view, the combination of Brown and Fontworks would only result in an image with a small degree of perspective, not an image with a truly realistic three-dimensional effect as would be created by the method of the present invention. Reply Br. 2.

We agree with Appellant. Brown discloses converting an advertising or promotional image from focal plane coordinates (*see Fig. 2*) to ground plane coordinates (*see Fig. 3*) by an inverse perspective transformation (*see p. 4, l. 25 to p. 5, l. 13*). The transformed image is applied to a ground surface 10, such as a playing field for a sporting event, using chalk or other

marking material so that so that a person watching the sporting event on television will, by process of mental or visual interpretation, visualize the image on the television screen in the form the image had prior to the inverse perspective transformation. P. 5, l. 21 to p. 6, l. 2. The image will appear to the observer to be in a plane at right angles to the observer's line of vision causing the image to stand out. P. 6, l. 2-5. In other words, Brown teaches that the entire planar image on the ground surface will appear to be in a plane at an angle to the ground surface, as if resting on an easel or a wedge. However, Brown does not teach a person of ordinary skill in the art how to define the angles necessary to make the background of the image appear to be perpendicular to the plane of advertisement.

In addition, combining Brown with Fontworks does not teach a person of ordinary skill in the art how to define the angles necessary to obtain the third dimension, such as the background, so that it appears to be perpendicular to the plane of advertisement. Although the Examiner alleges that it would have been obvious to a person of ordinary skill in the art to determine the appropriate angles, or use a computer to do so, the Examiner's legal conclusion of obviousness is not supported by a sound factual basis.

See In re Warner, 379 F.2d 1011, 1017 (CCPA 1967) (The examiner has the initial duty of supplying the requisite factual basis for the rejection and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis.). Here, the Examiner has failed to point to anything in the Brown and Fontworks references teaching a person of ordinary skill in the art how to arrive at claim 27's recitation that "said first orthogonal direction and said second orthogonal direction form an angle of 90 degrees minus a

first predetermined non-zero angle” and this is what makes the background appear to be perpendicular to the plane of advertisement. As Appellant has suggested, Brown only teaches taking an advertising or promotional image and making the image appear so that both the text and the rectangular background of the image are at the same angle with respect to the ground surface similar to the image of “Sanity” as depicted in Figure 1 of Appellant’s Reply Brief. *See* Reply Br. 2. Simply adding the textual shadow as taught by Fontworks to Brown’s image as proposed by the Examiner will not produce an image wherein the text appears to be perpendicular to the background as is depicted by “Sanity” and the rectangular outline of the background appearing perpendicular to the word “Sanity” in Figure 2 of Appellant’s Reply Brief. *See* Reply Br. 3.

In view of the foregoing, we do not sustain the Examiner’s rejection of independent claim 27 under 35 U.S.C. § 103(a) as unpatentable over Brown and Fontworks, nor the rejection of claims 28-36 depending therefrom.

DECISION

We reverse the Examiner’s rejections of claims 27-36.

REVERSED

Klh